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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/849,524	05/19/2004	Gordon Jenkins	JENKINS-CIP-1	5576

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EXAMINER

MORGAN JR, JACK HOSMER

ART UNIT	PAPER NUMBER
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3782

MAIL DATE	DELIVERY MODE
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10/18/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/849,524

Applicant(s)

JENKINS, GORDON

Examiner

Jack H. Morgan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 August 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 13-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 May 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of claims 1-12 in the reply filed on August 1, 2007 is acknowledged. Claims 13-20 are withdrawn.

Information Disclosure Statement

2. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609.04(a) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

Oath/Declaration

3. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:

It does not state that the person making the oath or declaration acknowledges the duty to disclose to the Office all information known to the person to be material to patentability as defined in 37 CFR 1.56.

The declaration of September 21, 2004 incorrectly refers to information "material to the examination" in accordance with 37 CFR "1.56(a)".

Drawings

4. The drawings are objected to because figures 6-8 do not appear in the brief description of drawings section of the specification. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top

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margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 9 and 12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 9 and 12 recites the limitation "seams" in line one of claim 9 and "center rear seam" in line 3 of claim 12. Both claim 9 and 12 are dependent on claim 1 which does not refer to any seam structure. Therefore, there is insufficient antecedent basis for this limitation in the claim. For the purposes of examination, both claims 9 and 12 are taken to depend on claim 7 which sets forth top, bottom and center rear seams.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-3, 5-9 and 11-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Dussich (US 5,674,010). Dussich discloses a bag (Fig 1, 10) having front and rear faces, and elongate bendable shape-retaining spine (3, 3a) bonded lengthwise parallel to an edge of the bag with the shape retaining spine being a T-shaped spine attached with adhesives (Col 2, lines 58-59) having one section (3a) at an angle to the remaining section (3), the horizontal axis (3a) further being adjacent to the top seam (9b) and the vertical axis (3) pointing towards the bottom seam (9b), the bag being capable of storing food articles and capable of being formed on a FFS machine (Fig 5) with a bottom seam (9a), top seam (9b) and center rear seam (7), the seams being heat seams (Col 3, lines 11-16), having two spines (3, 3a) formed parallel to the center rear seam on the rear face of the bag (Fig 1), the spine being formed of a shape retaining strand embedded in resilient plastic (Col 1, lines 44-45).

7. Claims 1, 2, 3, 5 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Weaver (US 220,510). Weaver discloses a bag (Fig 1, A) having front and rear faces, and elongate bendable shape-retaining spine (B) bonded lengthwise parallel to an edge of the bag with the shape retaining spine being a T-shaped spine attached with

adhesives (Col 2, lines 10-11) having one section at an angle to the remaining section, the horizontal axis further being adjacent to the top seam and the vertical axis pointing towards the bottom seam and being capable of storing food articles.

8. Claims 1, 2, 4 and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Cieslack et al. (US 4,267,768). Cieslack et al. disclose a bag (Fig 7a) having front and rear faces, and elongate bendable shape-retaining spine (102) bonded lengthwise parallel to an edge of the bag with the shape retaining spine being a L-shaped spine attached by heat sealing (Col 4, lines 55-57) and capable of storing food articles.

9. Claims 1, 2, 5-7, 9 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Clark (US 5,766,399). Clark discloses discloses a bag (23) having front and rear faces, and elongate bendable shape-retaining spine (210 and 84) bonded lengthwise parallel to an edge of the bag, with one section of the spine at a 180 degree angle to another section of the spine (See Fig 25 for a spine with two sections) the bag being capable of storing food articles and capable of being formed on a FFS machine with a bottom seam (12d and 14d), top seam (12c and 14c) and center rear seam (S), the seams being heat seams (Col 4, lines 23-25), having two spines formed parallel to the center rear seam on the rear face of the bag (Fig 23), the spines being formed of a shape retaining strand embedded in resilient plastic (Col 1, lines 44-45).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dussich (US 5,674,010) in view of Clark (US 5,766,399). Dussich discloses all the limitations of the claim except for the spine (3, 3a) being formed from a bendable shape-retaining plastic polymer material. Clark discloses a spine (84) being formed of a bendable shape-retaining plastic polymer material (210) in order to form the spines and easily heat fuse them to the bag. Therefore it would have been obvious to one of ordinary skill in the art at the time of invention to make the spine of Dussich out of a plastic polymer material in order to heat fuse them to the bag.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Shore (US 3,462,067), Rochette (US 3,537,636), Bell (US 4,810,103), Fukushi (JP 49-12112) and Nakamura (JP 2000-326996).

12. Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F. R. 1.111, including: "The reply must present arguments pointing

out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. A general allegation that the claims "define a patentable invention" without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. Moreover, "The prompt development of a clear Issue requires that the replies of the applicant meet the objections to and rejections of the claims." Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 2163.06 II(A), MPEP 2163.06 and MPEP 714.02. The "disclosure" includes the claims, the specification and the drawings.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jack H. Morgan whose telephone number is 571-272-3385. The examiner can normally be reached on M-Th 8-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

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you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jack H Morgan
Examiner
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NATHAN J. NEWHOUSE
SUPERVISORY PATENT EXAMINER